



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-854]

#### **Certain Steel Nails from Taiwan: Notice of Court Decision Not in Harmony with the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On July 15, 2022, the U.S. Court of International Trade (the Court or CIT) issued its final judgment in *Pro-Team Coil Nail Enter. v. United States*, Consol. Court No. 18-00027, Slip Op. 22-84 (*Pro-Team IV*), sustaining the U.S. Department of Commerce's (Commerce) remand results pertaining to the administrative review of the antidumping duty (AD) order on certain steel nails from Taiwan covering the period May 20, 2015, to June 30, 2016. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's *Final Results* of the administrative review, and that Commerce is amending the *Final Results* with respect to the dumping margin assigned to the mandatory respondent, PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc. and to the respondents that were not selected for individual examination (*i.e.*, the non-examined companies), Hor Liang Industrial Corp. and Romp Coil Nails Industries Inc.

**DATES:** Applicable July 25, 2022.

**FOR FURTHER INFORMATION CONTACT:** Erin Kearney or George McMahon, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0167 or (202) 482-1167, respectively.

## SUPPLEMENTARY INFORMATION:

### Background

On February 13, 2018, Commerce published its *Final Results* in the 2015-2016 AD administrative review of certain steel nails from Taiwan.<sup>1</sup> In this administrative review, Commerce selected three mandatory respondents for individual examination: PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc. (PT/Pro-Team); Unicatch Industrial Co., Ltd. (Unicatch); and Bonuts Hardware Logistics Co., LLC (Bonuts). Based on the mandatory respondents' failure to cooperate to the best of their abilities in responding to Commerce's requests for information, Commerce initially relied on the petition rate as adverse facts available (AFA) to determine the dumping rates for each of the mandatory respondents. Commerce assigned to the non-examined companies the dumping margin assigned to the mandatory respondents, 78.17 percent, in the *Final Results*.<sup>2</sup>

PT/Pro-Team and Unicatch challenged the application of AFA. Bonuts did not challenge the AFA rate it was assigned.<sup>3</sup>

In its *First Remand Order*, the Court sustained Commerce's use of facts available to determine the margin for Unicatch, but remanded two issues to Commerce: (1) the application of AFA to determine the AD margin of PT/Pro-Team; and (2) to explain the use of an adverse inference when using facts available to determine the AD margin of Unicatch.<sup>4</sup>

In its first remand redetermination issued on March 25, 2020, Commerce reconsidered its AFA determinations.<sup>5</sup> Commerce calculated a dumping margin for PT/Pro-Team that was *de*

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<sup>1</sup> See *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015–2016*, 83 FR 6163 (February 13, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

<sup>2</sup> *Id.*

<sup>3</sup> See *Pro-Team Coil Nail Enter. v. United States (Pro-Team I)*, 419 F. Supp. 3d 1319, 1323-25 (CIT 2019) (*First Remand Order*).

<sup>4</sup> *Id.*

<sup>5</sup> See *Final Results of Redetermination Pursuant to Court Remand, Pro-Team Coil Nail Enter. v. United States*, Consol. Court No. 18-00027, Slip Op. 19-169 (CIT December 19, 2019), dated March 25, 2020 (*First Redetermination*).

*minimis*, but continued to apply AFA to Unicatch.<sup>6</sup> Commerce used the AFA rate that it corroborated in the *Final Results* and recalculated the non-examined companies' rate using the "expected method" of averaging PT's and Unicatch's rates. Commerce calculated the non-examined companies' rate using a simple average of PT/Pro-Team's calculated zero percent margin and the 78.17 percent AFA rate applied to Unicatch.<sup>7</sup>

In the *Second Remand Order*, the Court sustained Commerce's calculation of a weighted-average dumping margin of zero percent for PT/Pro-Team and Commerce's application of a rate based on AFA for Unicatch.<sup>8</sup> The Court remanded Commerce's selection of the 78.17 percent rate applied as AFA, which the Court found Commerce did not adequately corroborate.<sup>9</sup> The Court also stated that "Commerce largely ignored Unicatch's arguments that the 78.17 percent rate was punitive, aberrational, and lacking consideration of the totality of the circumstances or the seriousness of Unicatch's conduct," but deferred further consideration of Unicatch's arguments that the petition rate was unduly punitive.<sup>10</sup>

In its second remand redetermination issued on February 23, 2021, Commerce provided additional analysis concerning the corroboration of the margin assigned to Unicatch as AFA. Commerce also recalculated the rate assigned to the non-examined companies using a simple average of the mandatory respondents' rates.<sup>11</sup>

In *Pro-Team III*, the non-examined companies challenged Commerce's decision to use a simple average of the mandatory respondents' AFA and *de minimis* rates to calculate the rate for non-examined companies. The CIT remanded Commerce's use of a simple average to calculate

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<sup>6</sup> Bonuts did not challenge the application of AFA to its company, and the AFA rate assigned to Bonuts has remained unchanged in this segment of the proceeding.

<sup>7</sup> See *First Redetermination* at 32.

<sup>8</sup> See *Pro-Team Coil Nail Enterprise, Inc. v. United States*, 483 F. Supp. 3d 1242 (CIT 2020) (*Second Remand Order*).

<sup>9</sup> *Id.*, 483 F. Supp. 3d at 1245, 1251

<sup>10</sup> *Id.*, 483 F. Supp. 3d at 1251.

<sup>11</sup> See *Final Results of Redetermination Pursuant to Court Remand, Pro-Team Coil Nail Enter. v. United States*, Consol. Court No. 18-00027, Slip Op. 20-163 (CIT November 16, 2020), dated February 23, 2021 (*Second Redetermination*), at 12. Upon review of the calculation of the non-examined companies' rate, we found that Commerce erred in the *First Redetermination* by inadvertently omitting Bonuts' rate from the calculation.

the rate for non-examined companies.<sup>12</sup> The CIT found that substantial evidence did not support Commerce's departure from the expected method<sup>13</sup> (*i.e.*, using a weighted average to calculate the non-examined companies' rate) because Commerce had not explained why the U.S. Customs and Border Protection (CBP) import volume data it had relied on for selecting mandatory respondents was not reliable for the purpose of calculating a dumping rate using the expected method.<sup>14</sup>

In its third remand redetermination issued on October 13, 2021, Commerce continued to assign rates based on total AFA to two selected respondents (Bonuts and Unicatch), calculated a zero percent margin for a third selected respondent (PT/Pro-Team), and calculated the weighted-average of the rates of these three mandatory respondents to apply to the non-examined companies.<sup>15</sup> This use of the expected method resulted in an AD rate of 35.30 percent for the non-examined companies.<sup>16</sup>

In *Pro-Team IV*, the Court explained that the statute, SAA, and case law supported the legal framework in which the mandatory respondents are assumed representative of the non-examined companies and also explained that Commerce does not bear a burden of data collection to determine non-examined companies' potential dumping margins.<sup>17</sup> The CIT agreed with Commerce's finding that substantial evidence did not support a finding that the mandatory respondents' rates were not representative because the history of the rates showed fluctuations

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<sup>12</sup> See *Pro-Team Coil Nail Enter. v. United States*, 532 F. Supp. 3d 1281, 1294 (CIT 2021) (*Pro-Team III*).

<sup>13</sup> The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), which Congress has approved as an authoritative interpretation of the statute, *Id.* § 3512(d), provides an "expected method" to determine the all-others rate in these situations. See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994) (SAA), at 873. When the dumping margins for all individually investigated exporters and producers are determined entirely on the basis of facts available or are zero or *de minimis*, "{t}he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available." *Id.* The SAA further provides that "if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods." *Id.*

<sup>14</sup> See *Pro-Team III*, 532 F. Supp. 3d at 1293-94.

<sup>15</sup> See *Final Results of Redetermination Pursuant to Court Remand, Pro-Team Coil Nail Enter. v. United States*, Consol. Court No. 18-00027, Slip Op. 21-93 (CIT July 20, 2021), dated October 13, 2021 (*Third Redetermination*).

<sup>16</sup> *Id.* at 17.

<sup>17</sup> See *Pro-Team Coil Nail Enter. v. United States*, Consol. Court No. 18-00027, Slip Op. 22-84 (CIT July 15, 2022) (*Pro-Team IV*).

from administrative review to administrative review. Moreover, the CIT held that Commerce’s determination to include in the calculation of the rate applicable to non-selected respondents Bonuts’ AFA rate was lawful because absent Bonuts’ cooperation, Commerce could not verify Bonuts’ claim that it was not representative.<sup>18</sup>

On July 15, 2022, the Court sustained Commerce’s *Third Redetermination*, and entered a final judgment.<sup>19</sup>

#### Timken Notice

In its decision in *Timken*,<sup>20</sup> as clarified by *Diamond Sawblades*,<sup>21</sup> the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s July 15, 2022, judgment sustaining the *Third Redetermination* constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

#### Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to PT/Pro-Team and the non-examined companies for the period May 20, 2015, through June 30, 2016. The revised rates for PT/Pro-Team and the non-examined companies are as follows:

<b>Producer/Exporter</b>	<b>Weighted Average Dumping Margin (Percent)</b>
PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc	0.00 percent
Non-examined companies <sup>22</sup>	35.30 percent

#### Cash Deposit Requirements

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<sup>18</sup> *Id.* at 18.

<sup>19</sup> *Id.*

<sup>20</sup> See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

<sup>21</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>22</sup> The non-examined companies are Hor Liang Industrial Corp. and Romp Coil Nails Industries Inc.

Because PT/Pro-Team and the non-examined companies have superseding cash deposit rates, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to CBP. This notice will not affect the current cash deposit rates.

#### Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were imported by PrimeSource Building Products, Inc.; produced and exported by Pro-Team Coil Nail Enterprise, Inc. and/or PT Enterprise Inc.; produced and exported by Hor Liang Industrial Corp. or Romp Coil Nails Industries Inc.; or produced and exported by Unicatch Industrial Co., Ltd., and were entered, or withdrawn from warehouse, for consumption during the period May 20, 2015 through June 30, 2016. Liquidation of these entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess ADs on unliquidated entries of subject merchandise imported by PrimeSource Building Products, Inc.; produced and exported by Pro-Team Coil Nail Enterprise, Inc. and/or PT Enterprise Inc.; produced and exported by Hor Liang Industrial Corp. or Romp Coil Nails Industries Inc.; or produced and exported by Unicatch Industrial Co., Ltd., in accordance with 19 CFR 351.212(b). We will instruct CBP to assess ADs on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis*,<sup>23</sup> we will instruct CBP to liquidate the appropriate entries without regard to ADs.

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 516(A)(c) and (e) and 777(i)(1) of the Act.

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<sup>23</sup> See 19 CFR 351.106(c)(2).

Dated: July 25, 2022.

**Lisa W. Wang,**  
*Assistant Secretary for Enforcement and Compliance.*

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